

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAIME IGNACIO ESTRADA,) No. C 10-4832 LHK (PR)
Plaintiff,)
vs.) ORDER DENYING MOTION TO
C. MALO-CLINES,) VACATE
Defendant.)

Plaintiff, proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Defendant Nurse Practitioner C. Malo-Clines at Pelican Bay State Prison (“PBSP”). On August 28, 2012, the Court granted Defendant’s motion for summary judgment and denied Plaintiff’s motion for summary judgment. (Dkt. No. 65.) On September 10, 2012, Plaintiff filed a notice of appeal with the Ninth Circuit. (Dkt. No. 68.) On September 14, 2012, the Ninth Circuit acknowledged Plaintiff’s notice of appeal and set a briefing schedule. (Dkt. No. 69.) On October 4, 2012, Plaintiff filed in this Court a motion to vacate pursuant to Federal Rule of Civil Procedure 60. (Dkt. No. 70.) Defendant has filed an opposition, and Plaintiff has filed a reply.

It is well established that once Plaintiff filed a notice of appeal of this Court’s judgment granting Defendant’s motion for summary judgment, this Court lost jurisdiction over the action. *Williams v. Woodford*, 384 F.3d 567, 586 (9th Cir. 2004). To seek Rule 60(b) relief during the

1 pendency of an appeal, “the proper procedure is to ask the district court whether it wishes to
2 entertain the motion, or grant it, and then move [the Ninth Circuit], if appropriate, for remand of
3 the case.” *Id.* (citation and internal quotation marks omitted). Plaintiff has not followed this
4 procedure. Nor is this Court inclined to entertain or grant the Rule 60(b) motion. Plaintiff’s
5 motion is DENIED.

6 IT IS SO ORDERED.

7 DATED: 3/14/13


LUCY H. KOH
United States District Judge